

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
(Charleston Division)**

INNOVATIVE INSURANCE
SOLUTIONS, LLC,

Plaintiff,

v.

AIX SPECIALTY INSURANCE
COMPANY; AIX, INC.; and
RECEIVERSHIP MANAGEMENT, INC.,
in its capacity as the INDEPENDENT
FIDUCIARY of the AEU HOLDINGS, LLC
EMPLOYEES BENEFIT PLAN and
PARTICIPATING PLANS,

Defendants

Case No.: 2:20-cv-00298

Circuit Court of Kanawha County, West
Virginia Civil Action No. 20-C-134

NOTICE OF REMOVAL

Defendants, AIX Specialty Insurance Company (“AIX Specialty”) and AIX, Inc., by its attorneys, Lewis Brisbois Bisgaard & Smith LLP, hereby provide notice pursuant to 28 U.S.C. §§1441 and 1446 of the removal of the above-captioned matter from the Circuit Court of Kanawha County, West Virginia, to the United States District Court for the Southern District of West Virginia. The grounds for removal are as follows:

I. INTRODUCTION

1. On February 7, 2020, Innovative Insurance Solutions, LLC (“IIS”) filed a Complaint for Declaratory Judgment, Breach of Contract, Common Law Bad Faith, and Violation of the West Virginia Unfair Trade Practices Act, against AIX Specialty, AIX, Inc., and Receivership Management, Inc., in its capacity as the Independent Fiduciary of the AEU Holdings, LLC Employee Benefit Plan and Participating Plans (“Receivership Management”) in

the Circuit Court of Kanawha County, West Virginia under Civil Action No. 20-C-134 (“Complaint”).

2. The Complaint alleges that AIX Specialty and AIX, Inc. have breached their duty to defend IIS, and have a duty to indemnify IIS, in the civil action styled *Receivership Management, Inc. in its capacity as the Independent Fiduciary of the AEU Holdings, LLC Employee Benefit Plan and Participating Plans v. A.J. Coral & Associates, Inc.; American Benefits Association, Inc.; America’s Health Care Alliance, Inc.; Assurance Agency, Ltd.; Brown, Brown & Gomberg, Ltd.; Commercial Group Intermediaries, Inc.; Employers Network Association, Inc., d/b/a Louis Deluca and Affiliates; Innovative Insurance Solutions, LLC; The Ferrell Agency, Inc.; Financial Security Consultants, Inc.; The HFA Plan and Mark Krogulski, individually, Health Care Reform Benefits Solutions, Inc. d/b/a HRB Solutions, Inc.; HUB International Midwest Limited; M. Brown & Associates, LTD.; Madison Street Group, LLC; MGU of the West Insurance Services, Inc. d/b/a OneSource StopLoss Insurance; Trendsetters & Associates, Inc.; and Williams-Manny, Inc. d/b/a Gallagher Williams-Manny Insurance*, Civil Action No. 1:19-cv-01385 pending in the United States District Court for the Northern District of Illinois (“Underlying Lawsuit”).

4. The Complaint further alleges that AIX Specialty and AIX, Inc. have breached the implied covenant of good faith and fair dealing and violated the West Virginia Unfair Trade Practices Act.

5. In the Complaint, IIS seeks special and general damages, punitive damages, attorneys’ fees, litigation costs, and prejudgment and post-judgment interest.

II. NOTICE OF REMOVAL IS TIMELY

6. The Complaint has not been served on AIX Specialty or AIX, Inc. AIX Specialty and AIX, Inc. first received a copy of the Complaint on April 24, 2020. This Notice of Removal is therefore filed within the time period prescribed by 28 U.S.C. § 1446(b) and F.R.C.P. Rule 6.

III. DIVERSITY JURISDICTION EXISTS

7. This action is a civil action of which this Court has original jurisdiction pursuant to 28 U.S.C. § 1332 and is one that may be removed pursuant to 28 U.S.C. § 1441 because it is a civil action wherein the amount in controversy exceeds \$75,000, exclusive of interest and costs, and involves a controversy between citizens of different states.

A. The Diversity of Citizenship Requirement is Satisfied, as the Parties are Diverse.

8. In the Complaint, IIS admits that it is a West Virginia limited liability company with its principal place of business in Kanawha County, West Virginia. The members of IIS are Jeffrey Mullins and Kristina Brooks, who are both residents and citizens of West Virginia.

9. AIX Specialty is a Delaware corporation with its principal place of business in Massachusetts, such that AIX Specialty is a citizen of Delaware and Massachusetts.

10. AIX, Inc. is a Delaware corporation with its principal place of business in Massachusetts, such that AIX, Inc. is a citizen of Delaware and Massachusetts.

11. As the current case is not a “direct action” against AIX Specialty or AIX, Inc., pursuant to 28 U.S.C. § 1332(c)(1), AIX does not assume the citizenship of its insured and is not a citizen of the State of West Virginia.

11. Receivership Management is a Tennessee corporation with its principal place of business in Tennessee.

B. The Amount in Controversy Requirement is Satisfied.

12. Receivership Management seeks damages from IIS in the Underlying Lawsuit in excess of \$75,000, in addition to the costs of defending the Underlying Lawsuit and the costs of prosecuting this action, satisfying the \$75,000 amount in controversy requirement of 28 U.S.C. § 1332.

C. The Complaint is Removable.

11. 28 U.S.C. § 1332 grants original jurisdiction of all civil actions which are removable to the proper Federal Court.

12. Although the general rule is that all properly joined defendants must consent to removal under the so-called “rule of unanimity,” an exception to that general rule exists where the non consenting defendant is merely a nominal party or where its interests are properly aligned with that of the plaintiff. *Means v. G&C Towing, Inc.*, 623 F.Supp. 1244, 1245 (S.D. W. Va. 1986).

13. The real defendant is the party being requested to indemnify and/or defend the plaintiff and provide damages for breach of contract and bad faith pursuant to the insurance contracts, while the nominal parties are the parties that could possibly benefit from the declaratory judgment because a judgment from this Court could limit the recovery from the plaintiff and its insurance carriers. *Herbalife Int’l, Inc. v. St. Paul Fire & Marine Ins. Co.*, 2006 U.S. Dist. LEXIS 19180 (N.D. W. Va. Mar. 30, 2006).

14. Receivership Management could possibly benefit from the declaratory judgment because a judgment from this Court could limit the recovery from the plaintiff and its insurance carrier, thereby constituting a nominal party in this lawsuit.

15. The consent of Receivership Management is not required for this removal.

16. Accordingly, removal of this garnishment proceeding to Federal Court is proper under prevailing law.

VI. REMOVAL TO THIS DISTRICT IS PROPER

15. Removal venue exists in the United States District Court for the Southern District of West Virginia because the Circuit Court of Kanawha County, West Virginia is within the Southern District of West Virginia.

16. Pursuant to 28 U.S.C. § 1446(a), copies of all process, pleadings, and orders received to date from AIX is attached to this Notice. Pursuant to Local Rule 3.4(b), a copy of the docket sheet from the Circuit Court of Kanawha County, West Virginia is also attached to this Notice.

17. Written notice of the filing of the Notice of Removal will be promptly served on the attorneys for plaintiff and a copy will be promptly filed with the Clerk of the Circuit Court of Kanawha County, West Virginia, pursuant to 28 U.S.C. § 1446(d).

18. Pursuant to Local Rule 3.4(a), a Civil Docket Cover Sheet is being filed contemporaneously with this Notice of Removal.

19. Defendants AIX Specialty and AIX, Inc. reserve the right to amend or supplement this Notice of Removal.

WHEREFORE, Defendants, AIX Specialty Insurance Company and AIX, Inc., request that this above-entitled matter be removed from the Circuit Court of Kanawha County, West Virginia.

/s/ Tim J. Yianne

Tim J. Yianne (WVSB #8623)
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*Attorney for AIX Specialty Insurance Company and
AIX, Inc.*

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CERTIFICATE OF SERVICE

I certify that on April 28, 2020, the foregoing **Notice of Removal** was filed with the Clerk of the Court using the CM/ECF system, which will send a Notice of Electronic Filing to, and constitutes service on the following:

Kevin L. Carr
Laura E. Hayes
James E. Simon
Spilman Thomas & Battle, PLLC
300 Kanawha Boulevard, E. (25301)
P. O. Box. 273
Charleston, WV 25321-0273

/s/ Tim J. Yianne

Tim J. Yianne, Esq. (WVSB #8623)